

9/28/89

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF NEWARK, NEW JERSEY
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

WHEREAS, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et. seq., the United States Environmental Protection Agency, Region II ("EPA") has completed a removal action at a certain property owned in whole or in part by the City of Newark, New Jersey (the "City"), located at 171-185 Foundry Street, Newark, New Jersey, Block 5005, Lot 5, on the tax map, City of Newark, New Jersey, to abate a release or threatened release of one or more hazardous substances, pollutants, or contaminants from the Site; and

WHEREAS, the real property located at 171-185 Foundry Street, Newark, New Jersey, Block 5005, Lot 5, on the tax map, City of Newark, New Jersey, (hereinafter the "Site" or the "Facility"), is a facility within the meaning of §101(9) of CERCLA, 42 U.S.C. §9601(9); and

WHEREAS, from approximately 1943 to 1983, Arkansas Company, Inc. and Galaxy, Inc. owned the Facility and/or operated a business at the Facility which engaged in the



manufacture of textile and various other specialty chemicals, including, but not limited to: chelating agents, dye carriers, fire retardants, fungicides, resin finishes and water repellents; and

WHEREAS, on February 13, 1978, Arkansas Company, Inc. transferred ownership of the Facility to Galaxy, Inc. by Warranty Deed, recorded on March 3, 1978, in Deed Book 4597, Page 368 (4003); and

WHEREAS, in or about 1983, the Facility was abandoned: hazardous substances remained improperly stored at the Facility at the time of abandonment, and constitute a release pursuant to §101(22) of CERCLA, 42 U.S.C. §9601(22); and

WHEREAS, on December 28, 1982, the Collector of Taxes for the City of Newark transferred the tax sale certificate for the Facility to the City of Newark, recorded in Deed Book 4982, Page 225, on April 6, 1983, at a public sale of land for delinquent municipal liens for non-payment of taxes by the Site owner, Galaxy, Inc., for 1981; and

WHEREAS, the City filed a Petition to Foreclose, No. P-307, for the Facility on July 27, 1983, and the Decree of Foreclosure was recorded on October 5, 1983, in Deed Book 4802, Page 982 (4004); and

WHEREAS, the City of Newark is currently the record holder of title to the Facility; and

WHEREAS, EPA determined that a removal action to abate the release and threatened release of hazardous substances at the Site is necessary pursuant to 42 U.S.C. §9604 in order to protect public health, welfare and the environment; and

WHEREAS, on August 10, 1987, the Regional Administrator of EPA, Region II, issued a unilateral order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606, to responsible parties Arkansas Company, Inc., Galaxy, Inc., and Mark von Sternberg, Respondents (EPA Index No. II-CERCLA-70103, hereinafter, the "Order") to perform a removal action at the Site; and

WHEREAS, the Respondents to the above Order, Mark von Sternberg, Arkansas Company, Inc., and Galaxy, Inc., declined to undertake or finance the removal action as required by the Order, and have not complied with the Order; and

WHEREAS, as a result of such non-compliance, EPA has undertaken the removal action at the Site unilaterally pursuant to its authority under Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1); and

WHEREAS, EPA has estimated the cost of the removal to be at least two million dollars (\$2,000,000.00); and

WHEREAS, the City plans to sell the Site at a public auction or sale of lands; and

WHEREAS, it is the mutual objective of the City and EPA to protect the public health, welfare and the environment; and

WHEREAS, the City and EPA wish to set forth their mutual understanding as to arrangements for providing for reimbursement of the EPA Hazardous Substances Superfund (the "Fund") for costs incurred by EPA at the Site in responding to the release or threatened release of hazardous substances at the Site necessary to protect the public health, welfare and the environment.

NOW, THEREFORE, the parties to this agreement, in consideration of the covenants and stipulations set forth herein, agree as follows:

1. The City's Department of Development will arrange for the sale of the Site by either public auction or designation pursuant to State statutes, to be conducted within six (6) months of the date of this agreement.

2. The six (6) month period specified in Paragraph 1, above, may be extended by mutual agreement of the parties by a time period no longer than that which may be required for compliance with the New Jersey Environmental Cleanup Responsibility Act (ECRA), NJSA §13:1K-1, et. seq.; and any sale of the Site property pursuant to this Agreement shall be contingent upon satisfaction of all federal, state and local laws and regulations applicable to such sale, including but not limited to ECRA requirements.

3. Prior to such public sale, the Division of Land Use Development shall have a certified appraisal of the Site performed and shall promptly provide a copy of such appraisal to EPA.

4. The City will not approve any sale of the Site without first consulting with and obtaining the written approval of EPA.

5. The City agrees to reimburse the Fund in an amount equal to the proceeds of such sale, not to exceed EPA's total response costs incurred in connection with the Site, within thirty (30) days of: (a) receipt of a written statement by EPA of the amount of such response costs incurred by EPA, or (b) the date of closing of such sale, whichever occurs later. Such reimbursement shall be made by check payable

to "EPA Hazardous Substances Superfund," and remitted to EPA Region II, Attn: Superfund Accounting, P.O. Box 360188M, Pittsburgh, PA 15251, with a letter of explanation identifying the Site, copies to the Chief, New Jersey Compliance Branch, Emergency and Remedial Response Division, and Chief, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Interest shall accrue on any unpaid amounts past due under this Paragraph at the thirty (30 day Treasury Bill rate in effect on the due date. No closing of a sale pursuant to this Agreement shall take place without EPA's participation and the attendance of an authorized EPA representative at the closing.

6. By entering into this Agreement, the City does not undertake or assume any responsibility or liability whatever with respect to the design, placement or construction of EPA's response actions at the Site.

7. The City agrees to fully cooperate with EPA for any purpose related to investigations or response actions which are or may be conducted with respect to the Site, including providing and facilitating Site access and in obtaining all necessary local permits and authorizations to conduct response actions at the Site. The City further agrees,

at reasonable times and on reasonable request, to permit EPA or its representatives to inspect and copy any documents in the City's possession or control in any way relating to EPA's response action at the Site. The City further agrees to place such conditions or restrictions in any contract for sale of the Site as may be necessary to effectuate the provisions of this paragraph.

8. Neither this Memorandum of Agreement nor any action taken by the City pursuant to this Agreement shall constitute any evidence against the City, or any admission of liability or responsibility by the City, a waiver by the City of any rights or defenses against EPA or any other person, firm, partnership, or corporation, or an estoppel against the City with respect to any matter, act, claim or thing.

9. Nothing in this Memorandum of Agreement shall constitute or be construed as a release by EPA or the City of any claim, cause of action or demand, in law or equity, against any person, firm, partnership, corporation, or governmental entity, for any liability arising out of or relating in any way to the ownership or occupation of the Site or to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.

10. This Agreement shall take effect upon approval and execution by representatives of both of the parties as provided below.

11. EPA agrees not to encumber the Site property prior to the closing of any sale by the City pursuant to this Agreement by filing notice of a federal lien under CERCLA, and EPA agrees to enter into negotiations prior to such sale with any potential purchaser of the Site designated by the City for an appropriate resolution of the purchaser's liability for EPA's CERCLA claims for past costs incurred in connection with the Site. Nothing herein shall preclude EPA from requiring, as part of any settlement of the purchaser's liability, any provision EPA deems necessary pursuant to any applicable statute, regulation or policy.

12. Nothing in this Memorandum of Agreement shall have any effect on the City's obligation to comply with all applicable federal, state or local requirements regarding the hazardous substances that may be located at the Site and the City shall exercise due care with respect to any such substances.

13. Nothing in the Memorandum of Agreement shall be construed to limit or restrict the nature or scope of response actions which may be undertaken by EPA in exercising its authority under federal law.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT:

CITY OF NEWARK,
NEW JERSEY



SHARPE JAMES, MAYOR

September 25, 1989
DATE

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION II


WILLIAM J. MUSZYNSKI, P.E.
ACTING REGIONAL ADMINISTRATOR

9-28-89
DATE

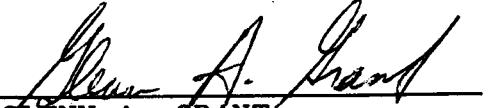

HAROLD LUCAS, DIRECTOR
DEPARTMENT OF DEVELOPMENT

ATTEST:

ROBERT P. MARASCO
CITY CLERK

DATE

Approval as to legality and form:


GLENN A. GRANT
CORPORATION COUNSEL

September 25, 1989
DATE